

Nebraska Ethics Advisory Opinion for Lawyers
No. 90-3

A COUNTY ATTORNEY MAY ETHICALLY PROSECUTE A SECOND COUSIN IN A CRIMINAL CASE IF THE COUNTY ATTORNEY HAS HAD NO SOCIAL OR BUSINESS CONTACT WITH THE ACCUSED.

FACTS

A County Attorney inquires whether he has an ethical obligation to disqualify himself in a criminal case where the defendant is a second cousin. The County Attorney has never had any social or business contact with the accused and adds that his family has lived in the County where he prosecutes since 1871 and that he has dozens of second, third and fourth cousins living in the area.

QUESTION PRESENTED

May a County Attorney ethically prosecute a second cousin in a criminal case if the County Attorney has had no social or business contact with the accused?

APPLICABLE CODE PROVISIONS

DR 5-101 (A): "Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests."

Canon 9 "A Lawyer Should Avoid Even the Appearance of Professional Impropriety".

DISCUSSION

Attorneys are obligated to disqualify themselves from matters in which they have an actual conflict of interest. Attorneys should also be mindful of the public perception of their conduct and should avoid even the

appearance of impropriety.

DR 5-101 (A) prohibits attorneys from participating in matters in which they have personal interests which may affect their professional judgment. It is obvious that this provision would prohibit a County Attorney from prosecuting close relatives such as parents, children, brothers, sisters, aunts or uncles. This provision also prohibits a County Attorney from prosecuting a close friend. *State ex rel. Nebraska State Bar Association v. Rhodes*, 234 Neb. 799, 453 N.W.2d 73 (1990). To avoid the appearance of impropriety, it has been held that a prosecutor should not be involved in the prosecution of a first cousin. *People v. Nuzzi*, 128 Misc.2d 502, 489 N.Y.S.2d 836 (1985).

The determination as to whether a County Attorney should be disqualified from the prosecution of a distant relative must be made on a case by case basis. Factors to be considered are the extent of any social, personal, property or business contacts with the accused; the public perception of impropriety; and fairness to the accused.

The Committee recognizes that in some situations there are virtually no ties or connections between distant relatives. The Committee is of the opinion that it is ethically permissible for a County Attorney to prosecute a distant relative, such as a second cousin, in such circumstances.

CONCLUSION

A County Attorney may ethically prosecute a second cousin in a criminal case if the County Attorney has had no social or business contact with the accused.